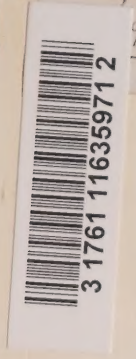
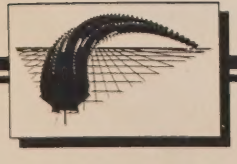
National Transportation Agency of Canada
Office national des transports du Canada



Rail Competitive Access

A Staff Report to the Comprehensive Review Panel

March 1992



Canada

RAIL COMPETITIVE ACCESS

EXECUTIVE SUMMARY

Section 266 of the *National Transportation Act, 1987* requires that, amongst others things, the Comprehensive Review address three questions. What is the effect of confidential contracts on both shippers and railways? How much competitive access do shippers have? What is the effect of the competitive line rate provisions on the viability of the railways?

Competitive access deals with provisions for confidential contracts, expanded interswitching, competitive line rates and final offer arbitration. Parliament wanted the legislation to do five things. It wanted it to give shippers and railways more choice in rates and services; it wanted railways to be better able to fulfil shipper needs; it wanted to make the market more competitive; it wanted to cut down administrative paper work; and it wanted to cut down government intervention.

These new provisions are to work as an integrated package to improve the competitive access of shippers to railway services. But they are also to help the railways to compete with other railways and other modes of transport both at home and in the U.S.

Each year since the new legislation came into effect, about four percent of railway cars have moved under provisions for expanded interswitching (from four miles to 30 kilometres). About 60 percent of this traffic would have been eligible for interswitching under past laws when rates were one-fifth the present level. One application - for a single carload, had to be decided by final offer arbitration. Five competitive line rates (three are renewal applications) have been set by the Agency since the Act came into force. These CLRs directly affected two shippers and covered less than one-tenth of one percent of railway revenues.

In spite of their limited formal application, shippers have been using these competitive access provisions as a bargaining tool in negotiations. These successful negotiations have enabled shippers and railways to agree on satisfactory and competitive rates and services. In 1988 they filed 1,638 contracts and amendments. In 1991 they filed 13,364. Both large and small shippers in all regions of the country have succeeded in negotiating confidential contracts.

U.S. law (*Staggers Rail Act of 1980*) also provided for a version of competitive access relief to shippers who are captive to the lines of a single railway in the U. S. But most shippers say they have little value and are cumbersome compared to competitive access laws in Canada.

National Transportation Agency of Canada
Staff Report to the
Comprehensive Review Panel

INTRODUCTION

Section 266 of the *National Transportation Act, 1987* requires that the Comprehensive Review deal with the following elements for competitive access in rail:

(3)(b) the effect of confidential contracts for the transport of rail freight on shippers and on the efficiency of the rail transportation system in the various regions of Canada;

(d) the extent to which competitive access to railway transportation has been achieved by shippers in the various regions of Canada;

(j) the effect of sections 134 to 142 (*competitive line rates*) on the revenues, financial viability, capital investment and service levels of the railway companies;

This analysis by National Transportation Agency staff states how much Canadian shippers have used each of these competitive access provisions and the effect they have had on the financial viability of Canadian railways.

Today's global marketplace is highly competitive. Rail transportation cost is an important component of the delivered price of a product. To help rail shippers and railways to compete more effectively, the *National Transportation Act, 1987* introduced a package of provisions with confidential contracts, competitive line rates, expanded interswitching and final offer arbitration designed to improve competitive access and to allow shippers and railways to negotiate rates and services tailored to each case.

These provisions were intended to work together as an integrated package to improve competitive access for shippers and to help the railways to remain competitive in both domestic and transborder markets. Before 1988, captive shippers in Canada had very little bargaining power in their rate negotiations with the railways. Under the new legislation, if a shipper cannot negotiate a satisfactory rate with a railway to meet a market price they can use a competing carrier through either expanded interswitching or a competitive line rate. Final offer arbitration is also available. Confidential contracts, without provisions such as competitive line rates, expanded interswitching and final offer arbitration, could open captive shippers, particularly those for whom trucking is not a feasible alternative, to monopoly abuse by the railway.

CONFIDENTIAL CONTRACTS

Description

A shipper and a railway company may make a contract with terms that are confidential. The contract may encompass new rates, rebates or any terms that the parties agree to. The contract must, however, be filed with the Agency and a summary with only non-confidential information from the contract must be made public.

Background

Canadian railways have had the freedom to set rates without government approval since 1967. The *Staggers Rail Act of 1980* gave American railways similar freedom, but went further by allowing shippers and railways to set rates and conditions of carriage in confidential contracts.

The *National Transportation Act, 1987* allowed confidential contracts. These contracts have two uses: they remove the competitive disadvantage that Canadian railways face with their American counterparts and other modes of transport in Canada; and they give the shippers more choices in pricing. Legislators thought that this provision would let carriers fit their rates to the special needs of Canadian shippers and serve those needs better. As well, railways could react faster and better to competition from other modes.

Results

One of the elements to be studied during the Comprehensive Review is the effect of confidential contracts on shippers and on the efficiency of the Canadian rail transportation system. The number of contracts and amendments filed with the Agency has increased dramatically from 1,638 in 1988, when the Act came into effect to 13,364 in 1991 (see Appendices 1.1 through 1.3A for more details). Aside from statutory grain, the volume of freight moving under confidential contract has increased from 30 percent of total tonnage in 1988 to about 70 percent in 1990. It is important to note that no provision of the *National Transportation Act, 1987* allows the Agency, or a shipper, to impose a confidential contract on a carrier. Accordingly, the growing number of contracts is an indication of how the *National Transportation Act, 1987* has made negotiations between shipper and carriers easier.

During the Agency's Annual Reviews, shippers said that the confidential contract provision is the most important provision for getting competitive terms in rail transportation. Shippers have said that both rate concessions as well as rate and service guarantees are the most important features in their contract negotiations. Contracts allow shippers to negotiate rate and service packages especially tailored to their transportation needs.

According to Agency surveys, service guarantees, though already rated highly by shippers, are becoming even more important. In 1990, for the first time, shippers rated service guarantees as more important than rate escalation guarantees. This shows that shippers and railways now devote themselves more to discussing the service clauses in their contracts.

Shippers have also reported that the leverage provided by competitive line rates, interswitching and final offer arbitration influenced their negotiations for confidential contracts with the railways - and these agreements are, by definition, mutual. Clearly, many factors may have gone into these negotiations, such as the market conditions faced by the shippers, conditions of service, profit expectations, volume commitments, and transportation alternatives.

More and more traffic is moving under confidential contract terms. So published rates may be a very poor guide to market rates. But most shippers have said that contract rates were, in fact, lower than published rates. Some of the rate reduction may be attributable to shipper concession or trade off.

Since 1988, survey results have gradually shown a growing number of shippers reporting contract rates higher than those negotiated earlier. But many shippers have been able to either keep the past year's rates or get lower rates by locking more rail traffic under contracts.

In Agency surveys, railways have said that the confidential contract provision is "positive and market-oriented". They have also said that even though traffic has gone down in the past years, the provision has let them keep their customers.

INTERSWITCHING

Description

The *National Transportation Act, 1987* provides competitive access to shippers mainly in urban areas through regulated interswitching. (Regulated interswitching is switching rail cars between railway companies over distances and under terms set by law.)

Background

Before the *National Transportation Act, 1987* was passed, interswitching rates and distances were set by law and regulation. These rates were for traffic moving to, or from, a point within four miles of an interchange. The four-mile distance was set in 1908 and remained unchanged until 1988. Interswitching charges had not gone up since 1951 and by the 1980s were generally acknowledged to be non-compensatory.

The *National Transportation Act, 1987* extended the historical four-mile interswitching limit to 30 kilometres. The new legislation also helped shippers outside the 30-kilometre radius. These shippers can apply to the Agency to get the same consideration as those inside this radius. Since they are over 30 kilometres from an interchange, they may not be able to compete fairly with shippers inside the radius without access to regulated interswitching.

Every year, the Agency sets interswitching rates at compensatory levels after consulting both shippers and railways. A copy of the 1992 interswitching rate scale is in Appendix 1.4.

Result

To find out how much competitive access shippers now have thanks to regulated interswitching, the Agency has collected statistics from CN and CP. These statistics show that CN and CP interswitched between 130,000 and 140,000 cars each year from 1988 to 1990. That is four percent of all carloads (for details, see Appendices 1.5 and 1.5A). Over half that volume was traffic within the four-mile limit that existed before 1988. Therefore, regulated interswitching has applied to 60,000 more cars a year.

Railway revenues for interswitching within the four-mile limit have increased considerably. Before 1988, the railways received about $30 a car for interswitching within the four-mile limit. The new interswitching regulations set Zone 1 interswitching rates at $165 a car in 1988. By 1992 the Zone 1 rate had been increased to $195 a car.

Had there been no revision to the interswitching rates in 1988, Canadian railways would have received from $1.8 to $2.4 million for interswitching within four miles of an interchange from 1988 to 1990. Traffic statistics submitted by the railways show that their revenue for such traffic within the four miles was actually from $11.8 to $14 million. So the net gain of the railways is from $10 to $11.6 million.

No similar comparison can be made for traffic in the other three Zones. But without interswitching, the originating or terminating carrier would have received a part of the line haul revenue that is usually greater than the corresponding interswitching rate set under the *National Transportation Act, 1987.*

Since 1988, the Agency has received nine applications from shippers outside the 30-kilometre interswitching limit requesting that they be deemed to be within the limit (see Appendix 1.6). Most of the applications were later withdrawn. The Agency granted the shipper's request in one case, but the Federal Court ordered the Agency to deal with a procedural matter in that case. Yet before it did so, the shipper withdrew the application.

COMPETITIVE LINE RATES

Description

Competitive line rates (CLRs) provide more choices to shippers who are physically located on one rail line at either origin or destination. Captive shippers may ask the railway to set a rate for moving goods to a competing carrier's line. If the parties cannot agree, the shipper may request the National Transportation Agency to set a rate according to legislated guidelines.

Background

CLRs were designed to create competition for shippers who have access to only a single railway either at the beginning or the end of the route they wish to take or for shippers who cannot get

competitive rail service through the interswitching provisions of the Act. CLRs were designed to create competition similar to that in areas of Canada where the shipper can choose from more than one railway.

Results

Extent to which CLRs used by shippers

The Agency has set five competitive line rates (three are renewal applications) since the Act came into force (see Appendix 1.7 for more details). Over 300 of the shippers surveyed by the Agency for its Annual Review in each of the years 1989 and 1990 reported using rail services. Of these, 24 in 1989 and 16 in 1990 said they had attempted to negotiate an agreement with a connecting carrier for setting a CLR. Thirteen of these in 1989 and 12 in 1990 received a satisfactory rate and service package through the negotiations.

Most surveyed rail users who tried to negotiate CLRs had freight bills (rail and other modes) over one million dollars a year. In many cases, these respondents were in Western Canada, where much of Canada's captive bulk traffic originates; but in other instances, they were in Central Canada, New Brunswick and Nova Scotia.

Most rail users who bargained for the use of CLRs said using this provision was the most important factor in getting competitive terms for rail services. Informal shipper surveys conducted by the Canadian Industrial Transportation League confirmed the importance shippers attached to the CLR provision (see Appendix 1.9 for more details).

Effect of CLRs on the financial viability of railways

CLRs established by the Agency since the *National Transportation Act, 1987* was passed have directly affected only two shippers and have covered less than one-tenth of one percent of railway revenues. However, railway financial performance is affected not only by the competitive access provisions of the *National Transportation Act, 1987*, but also by the economy in general. Railway financial performance since 1988 has been affected by three major economic factors.

The first is the lower grain volumes handled in 1989 caused by a drought on the Prairies in 1988.

The second major economic factor has been the recent recession, which has lowered traffic volumes and the amounts that shippers and railways may be able to recover from their customers from price changes.

The third factor is the Canadian dollar's increase in value since 1986.

Despite these factors, Canadian railway operations still make profits, even though the earnings of many Canadian industries have declined.

Canadian railway companies were opposed to the proposed CLR provisions before they became part of the *National Transportation Act, 1987.* And they have continued to oppose the provision since the Act came into force. They believe that CLRs threaten their commercial viability, that CLRs discourage investors, and that the provisions mean one-way free trade between Canada and the U.S.

FINAL OFFER ARBITRATION

Final Offer Arbitration

Description

Final offer arbitration applies to disputes between a shipper and a carrier in matters of private (rather than public) interest. Disputes considered for final offer arbitration could include the rate charged to a shipper or a condition of carriage for traffic that the rate applies to. The Agency may appoint an arbitrator who must choose either the shipper's or the carrier's offer - but no other.

Background

The final offer arbitration provision intends to fulfil the need for a faster, inexpensive and less legalistic way to settle rate disputes between shippers and carriers.

Results

The Agency has received only three applications for final offer arbitration since 1988, and only one was referred to an arbitrator (see Appendix 1.8 for more details). It dealt with a dispute between Parrish and Heimbecker Limited and CN over a single carload rate for flour destined for export. The flour was to be shipped from Hanover, Ontario, to Montreal, Quebec, and to Halifax, Nova Scotia.

During the Agency's Annual Review, shippers have told the Agency that even though they have not resorted to final offer arbitration, they have used the provision as a lever in rate negotiations with railways. In particular, captive shippers have said that final offer arbitration is very important in their efforts to secure more competitive rail services. Shippers have stated that often the threat of final offer arbitration has enabled them to reopen stalled rate negotiations with railways. And has allowed them to secure more competitive access to railway transportation. Informal shipper surveys conducted by the Canadian Industrial Transportation League further confirmed this view (for more detail see Appendix 1.9).

RAIL COMPETITIVE ACCESS... THE U.S. EXPERIENCE

Rail competitive access provisions to help captive shippers are not unique to Canada. U.S. laws have similar provisions. But in the U.S., unlike Canada, the captive shipper must first be able to prove they are captive. In Canada, the shipper can get competitive access through timely, streamlined competitive access or dispute settling provisions. But the American shipper must overcome many administrative and legal hurdles, case by case, before they can secure competitive access from the Interstate Commerce Commission (ICC).

The Scope Of Competitive Access Shipper Protection In the U.S.

Under the *Staggers Rail Act of 1980*, U.S. captive shippers can also apply for relief from rates they believe to be unlawful and unfair. The Act offers shippers two key remedies: the ICC can set maximum rates and order competitive access to the shipper under two provisions of the Act - the reciprocal switching and the terminal facilities provisions. Sometimes shippers can obtain competitive access by the ICC's power to order through routes and joint rates.

Here is a summary of these provisions for competitive access for captive rail shippers in the U.S.:

Interswitching

U.S. law allows interswitching of traffic between competing railways, calling it "reciprocal switching".

Under U.S. law, the ICC can order railways to enter into reciprocal switching agreements "where it finds such agreements to be practicable and in the public interest". In practice, it has been very hard to get the ICC to order reciprocal switching. The U.S. law also demands much more proof from the shipper than Canadian law. In Canada, as we have seen, interswitching rates are regulated for all shippers within 30 kilometres of an interchange. But in the U.S., the shipper can only obtain similar competitive rates and services by filing special applications for relief with the ICC.

Competitive Line Rates

The CLR provisions in Canadian law have no exact equivalent in the U.S. The onus is on the U.S. shipper both to prove that they are captive and that the rates charged are unreasonable before the ICC can order competitive access relief. Such relief could be shared trackage rights over a single railroad; or it could be lower rates from the railroad company. While captive shippers have little problem showing that there is no intra and intermodal competition, proving that there is no product and geographic competition is extremely hard. So making an appeal takes much more time in the U.S. than in Canada. And it is much more complicated.

Final Offer Arbitration

The ICC has no power to impose final offer arbitration decisions on railroad rates and services.

The ICC has begun to encourage the settlement of disputes with techniques such as mediation, settlement negotiation, arbitration and negotiated rulemaking. This follows recent U.S. laws such as the *Administrative Dispute Resolution Act* and the *Negotiated Rulemaking Act*.

Specifically, the ICC has begun a proceeding to create rules for applying arbitration to motor carrier rate cases, rail abandonment and subsidy cases. The ICC has proposed a form of final offer arbitration to solve inter-railway disputes concerning car-hire rates.

But as yet, U.S. transportation law and regulations have no way to settle shipper-rail-carrier rate disputes that are as fast, sure and simple as the ones we have in Canada.

The Effectiveness Of U.S. Competitive Access Provisions

To secure competitive access in the U.S., the shipper must first prove to the ICC that he is captive and that the railway is causing the shipper undue harm. U.S. captive shipper groups such as Consumers United For Rail Equity (CURE), The Consumers Federation of America and Western Fuels Association (owners and operators of coal mines and utility companies), have said that the process of securing relief in the U.S. is very cumbersome, legalistic, time consuming and overall, frustrating.

Proving captivity in itself can be a major hurdle, as it was in Canada before the new legislation took effect in 1988. First the ICC must find out if there is competition in the market. But beyond this, the shipper must prove that they cannot use either an alternate rail carrier to move the product or any other kind of transportation. Such decisions often mean lengthy and complex arguments about the nature and competitiveness of the shipper's business, how much competition there is from competing carriers and industry suppliers and harm that railway monopoly abuse could or has caused.

If the shipper can prove that there is no competition for moving their goods, then it must pass a second hurdle - proving that the rate charged is "unreasonable". A second hearing must be held to decide the case. To find out if rates are "unreasonable", the ICC needs to find out if the railway is "revenue adequate". If the railway is not "revenue adequate", then the shipper receives no relief.

In the U.S., captive traffic is a small proportion of the total. In Canada, however, it represents about 60 percent of all railway traffic.

In Summary

Though there are rail competitive access provisions in U.S. law, people generally see them as more cumbersome and legalistic than those in Canada. And they have less scope to apply them. U.S. captive shipper groups, notably in the resource and utility sectors, have complained long and hard about access to competitive rail services.

Confidential Contracts and Amendments Filed by Month, 1988 to 1991

Month	Contracts				Amendments			
	1988	1989	1990	1991	1988	1989	1990	1991
January	9	152	288	325	3	38	259	693
February	28	158	319	411	28	59	455	668
March	59	160	296	402	24	84	408	659
April	84	199	285	385	29	97	335	696
May	108	230	364	397	24	128	364	646
June	100	200	273	427	14	83	346	629
July	82	183	402	447	7	85	392	733
August	132	177	276	360	37	109	368	589
September	170	227	303	399	56	135	337	549
October	156	183	360	514	66	143	544	733
November	157	239	352	527	65	143	563	850
December	138	417	382	492	62	182	618	833
TOTAL	1,223	2,525	3,900	5,086	415	1,286	4,989	8,278

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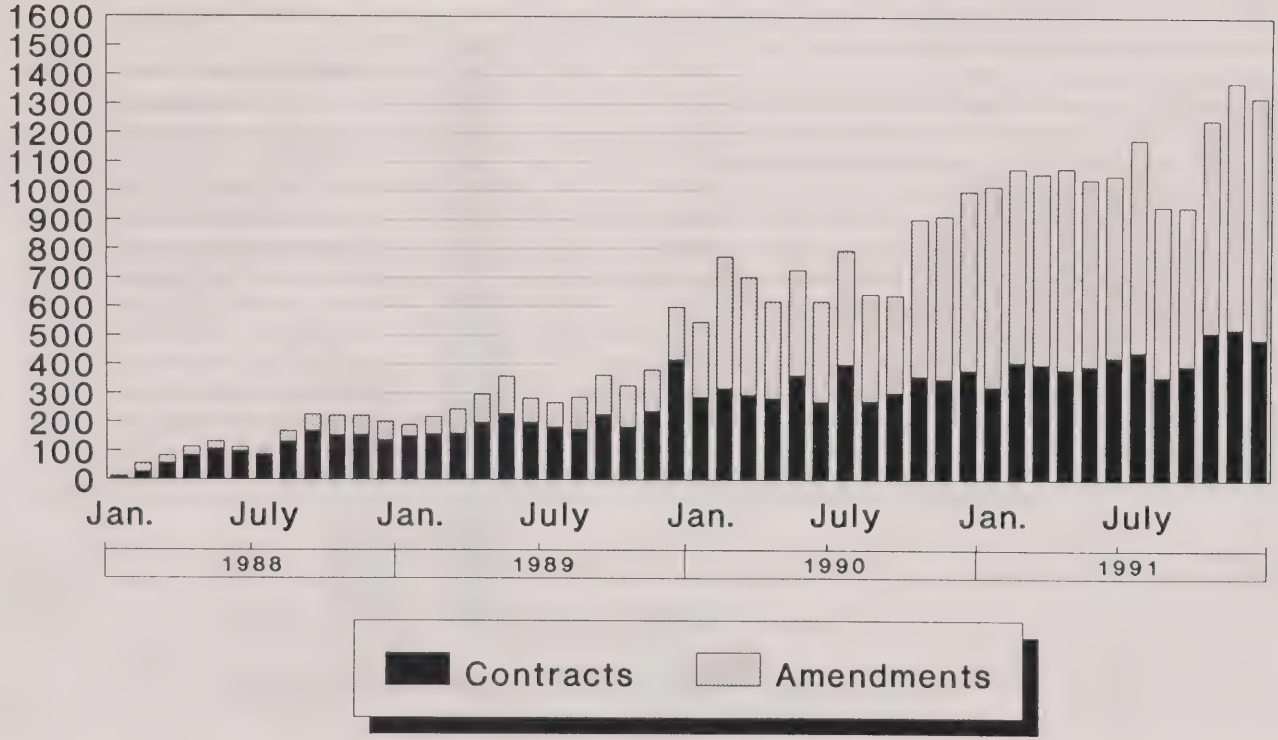
National Transportation Agency of Canada
Source: Agency statistics

Appendix 1.1A

Confidential Contracts and Amendments Filed by Month, 1988 to 1991



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Source: Agency Statistics

Confidential Contract Filings
1991

Rail Carrier	Abbreviation	Number
Algoma Central	AC	4
Burlington Northern	BN	112
CN Rail	CN	1,467
CP Rail	CP	3,310
ConRail	CR	24
CSX Transportation	CSXT	131
Norfolk Southern	NS	31
Norfolk Western	NW	3
Quebec N. Shore & Labrador	QNS&L	0
Southern	SOU	0
Wisconsin Central	WC	4
TOTAL		5,086

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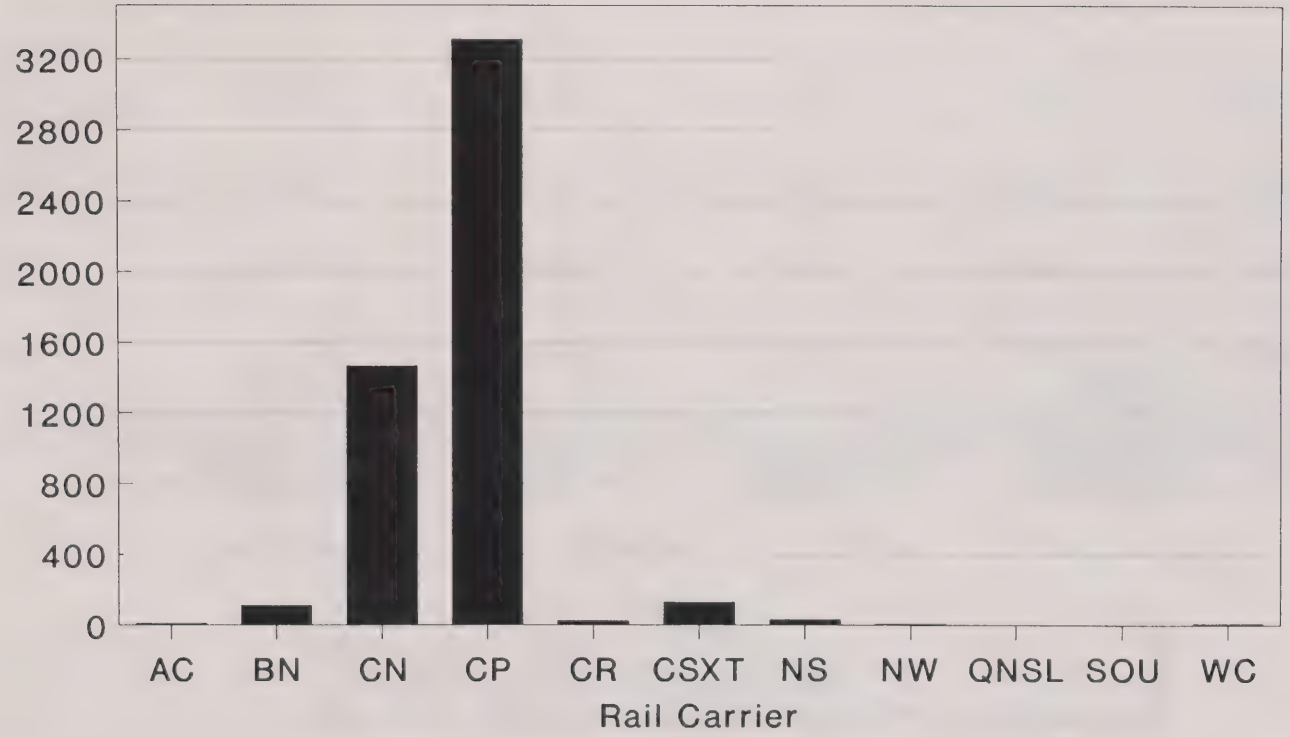
Source: Agency statistics

Appendix 1.2A

Confidential Contract Filings
1991



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Source: Agency Statistics

Rail Carrier Filings
1988 to 1991

Year	Contracts	Amendments	Tariffs	Supplements	TOTAL
1988	1,223	415	965	1,690	4,293
1989	2,525	1,286	1,055	2,763	7,629
1990	3,900	4,989	828	2,909	12,626
1991	5,086	8,278	862	916	15,142

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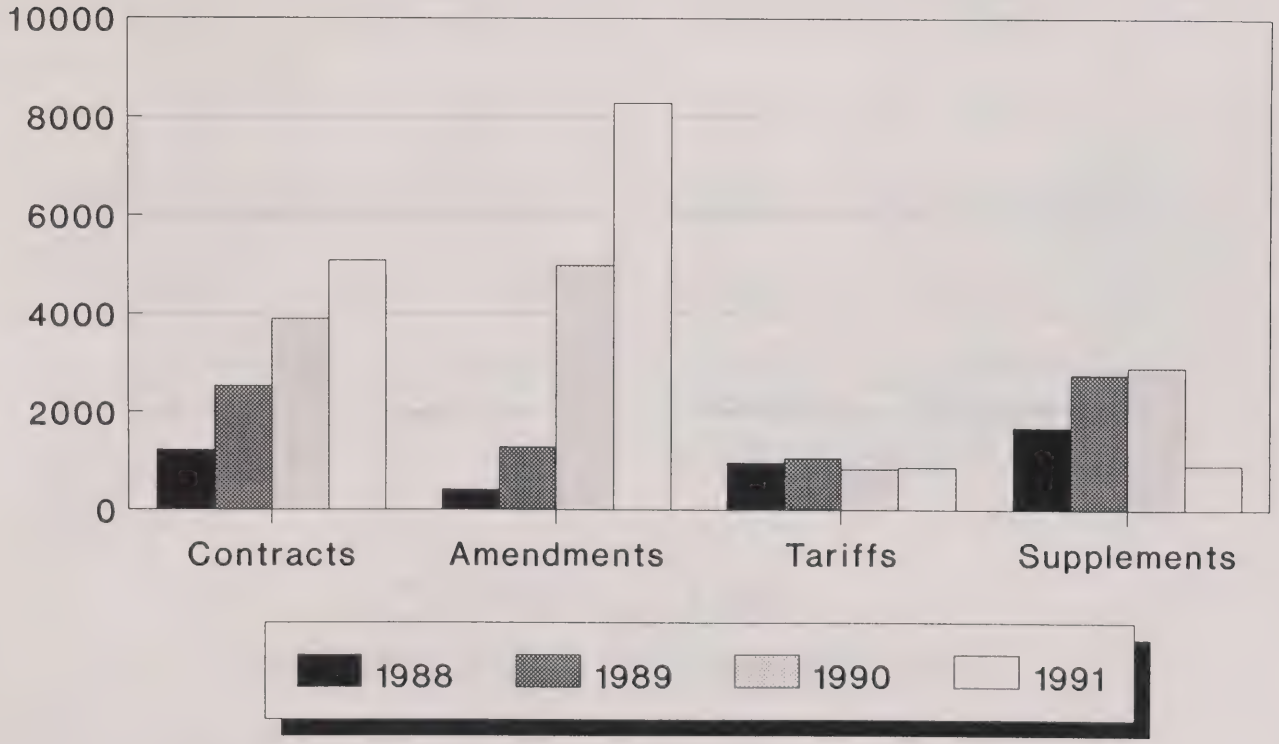
National Transportation Agency of Canada
Source: Agency statistics

Rail Carrier Filings
1988 to 1991



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Source: Agency Statistics

Interswitching Rates Effective January 1, 1992

Zone	Distance	Maximum Rate ($ per car)	
		Less than 60 cars	60 or more cars
1	0 - 6.4 km	195	100
2	6.4 - 10 km	210	100
3	10 - 20 km	240	100
4	20 - 30 km	315	100

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Source: Agency statistics

Rail Cars Interswitched
CN/CP Combined, 1988 to 1990

Year	Zone 1	Zone 2	Zone 3	Zone 4	TOTAL
1988	87,884	15,685	17,503	10,910	131,982
1989	76,268	19,137	33,131	15,403	143,939
1990	66,095	14,175	37,259	16,243	133,772

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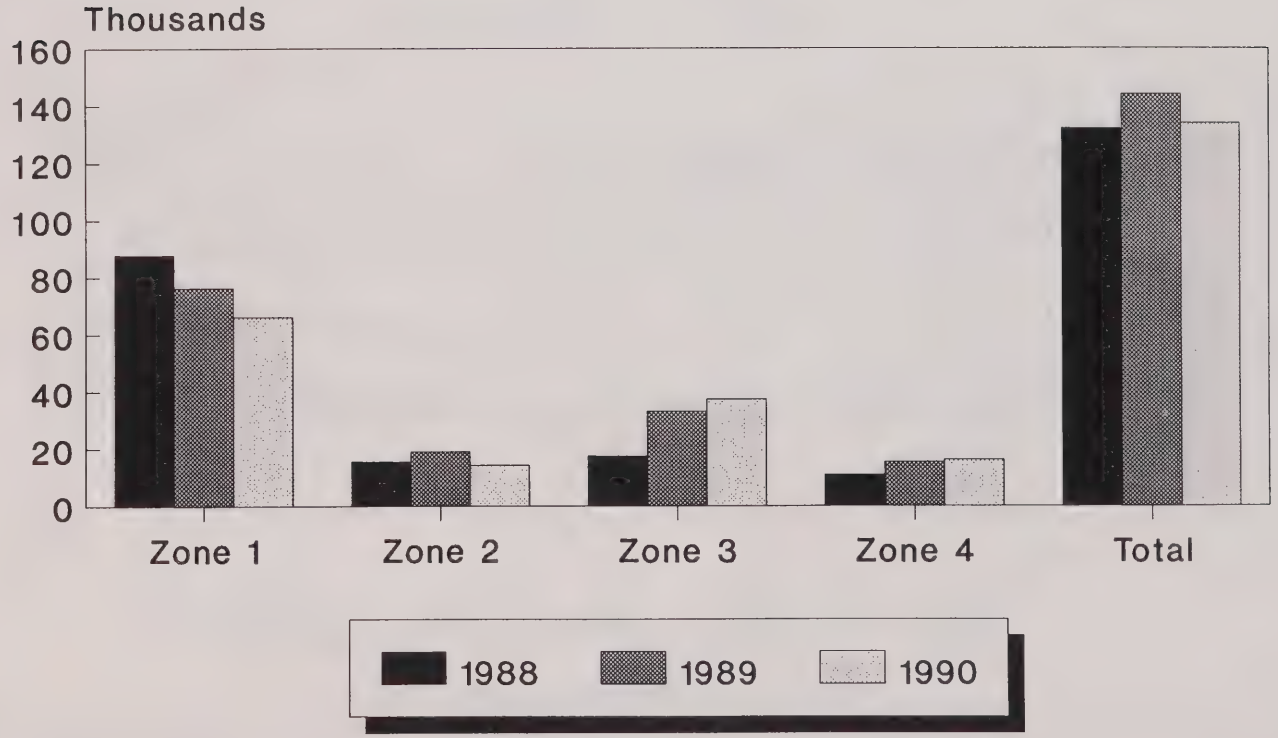
Source: CN and CP Rail

Appendix 1.5A

Rail Cars Interswitched
CN/CP Combined, 1988 to 1990



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Source: CN and CP Rail

Interswitching Cases Filed Pursuant to the National Transportation Act, 1987

Applicant–Complainant	Respondent	Dispute	Agency Decision
Manitoba Rolling Mills	CP	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that its facility located at Selkirk, Manitoba be deemed to be within the prescribed limits of the CP/BN interchange in Winnipeg, Manitoba.	The application was withdrawn on March 3, 1988.
C.I.L. Inc.	CP	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that its facility located at West Carseland, Alberta be deemed to be within the prescribed limits of the CN/CP interchange in Lyalta, Alberta.	The application was withdrawn on June 30, 1988.
Westar Timber Ltd.	CN	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that a lumber transfer yard located at Coaticook, Quebec be deemed to be within the prescribed limits of the CN/CP interchange in Sherbrooke, Quebec.	The application was withdrawn on June 30, 1988.
Dow Chemical Company	CN	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that its facility located at Varennes, Quebec be deemed to be within the prescribed limits of the CN/CP interchange in Montreal, Quebec.	The application was withdrawn on August 9, 1988.

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Source: Agency statistics

Applicant-Complainant	Respondent	Dispute	Agency Decision
Domtar Inc.	CN	Application pursuant to subsection 152(3) of the NTA, 1987 for a determination on whether the facilities of Domtar at Donnacona, Quebec should be deemed to be within the interswitching limits of Allenby, Quebec.	By Decision No. 269-R-1988 dated August 17, 1988, the Agency determined that the granting of the application for extended interswitching would remove the competitive disadvantage experienced by Domtar vis-à-vis neighbouring pulp and paper producers. Accordingly, the Agency decided that the Domtar facility should be deemed to be within the interswitching limits of Allenby, Quebec. CN applied to the Federal Court of Appeal and received leave to appeal the decision of the Agency. On March 12, 1990, the Court set aside the Agency decision and returned the matter to the Agency for redetermination. Domtar subsequently withdrew its application before the Agency.
CIL Inc.	CP	Application pursuant to section 152 of the NTA, 1987 to determine whether the traffic consigned to or from the facility of Cold Springs Agri-Services Ltd. at Putnam, Ontario was subject to the interswitching provisions of the NTA, 1987 and the Railway Interswitching Regulations.	In its Decision dated November 15, 1988, the Agency determined that the CP track serving the Cold Springs facility falls within the definition of a siding, as set out in the Railway Interswitching Regulations. Accordingly, the Agency confirmed that the traffic consigned to or from the Putnam facility was eligible for interswitching in accordance with section 152 of the NTA, 1987.

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Source: Agency statistics

Applicant–Complainant	Respondent	Dispute	Agency Decision
Essex Terminal Railway Company		Application to enact a regulation pursuant to subsection 152(4) of the NTA, 1987 providing that the interswitching rates set out in the Railway Interswitching Regulations do not apply to railway companies which derive ninety percent or more of their gross freight revenue from interswitching.	By Order No. 1988-R-1067 dated November 22, 1988, the Agency determined that ETR had been unable to demonstrate that it would suffer to any great extent through adherence to the Regulations. Accordingly, the Agency denied the application and ordered ETR to publish an interswitching tariff and abide by the Regulations. The order of the Agency was appealed to the Governor-in-Council. By Order-in-Council P.C. 1991-2407 dated December 5, 1991, the Governor-in-Council rescinded the order of the Agency and varied the Railway Interswitching Regulations.
R. Pelletier Transit Inc.	CN	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that its facility located at Coaticook, Quebec be deemed to be within the prescribed limits of the CN/CP interchange in Sherbrooke, Quebec.	The application was withdrawn on July 7, 1989.
Celgar Pulp Company	CP	Application pursuant to subsection 152(3) of the NTA, 1987 for a determination on whether the facilities of Celgar at Kraft, B.C., should be deemed to be within the interswitching limits of Nelson, British Columbia.	By Decision No. 439-R-1989 dated September 5, 1989, the Agency determined that Nelson did not meet the definition of an interchange as described in section 110 of the NTA, 1987. Accordingly, the application was denied.

Comprehensive Review Working Group
National Transportation Agency of Canada
Source: Agency statistics

Applicant–Complainant	Respondent	Dispute	Agency Decision
C.I.L. Inc.	CP	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that its facility located at West Carseland, Alberta be deemed to be within the prescribed limits of the CN/CP Alyth interchange in Calgary, Alberta.	By Decision No. 165-R-1990 dated March 23, 1990, the Agency determined that the circumstances did not justify an extension of the Calgary interswitching limits to include CIL's facility at West Carseland. Accordingly, the application was denied.
Polymeric Resins Inc.	CN	Application pursuant to subsection 152(3) of the NTA, 1987 for an extension of interswitching limits in order that a shipper's facility located at Varennes, Quebec be deemed to be within the prescribed limits of the CN/CP interchange in Montreal, Quebec.	The application was withdrawn on April 4, 1990.

Comprehensive Review Working Group
National Transportation Agency of Canada
Source: Agency statistics

Competitive Line Rate Cases Filed Pursuant to the National Transportation Act, 1987

Applicant–Complainant	Respondent	Dispute	Agency Decision
Canada Packers Inc.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of a competitive line rate for the movement of suspended meat in rail cars from Lethbridge, Alberta to Calgary, Alberta by CP for transfer to CN.	The application was withdrawn on May 3, 1988.
Alberta Gas Chemicals Inc.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of a competitive line rate for the movement of methanol in shipper-supplied tank cars from Medicine Hat, Alberta to Coutts, Alberta by CP for transfer to the Burlington Northern Railroad Company.	By Order No. 1988-R-798 dated September 8, 1988, the Agency determined, pursuant to section 142 of the NTA, 1987, the amount of the CLR for the requested movement and directed CP to publish the rate to remain in force for a period of one year. CP applied to the Federal Court of Appeal and received leave to appeal the decision of the Agency. By judgement dated October 25, 1989, the appeal was dismissed. CP further filed an application to the Supreme Court of Canada for leave to appeal the judgement of the Federal Court. The application for leave to appeal was dismissed on March 15, 1990.

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Source: Agency statistics

Applicant–Complainant	Respondent	Dispute	Agency Decision
Alberta Gas Chemicals Inc.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of a competitive line rate for the movement of methanol in shipper-supplied tank cars from Medicine Hat, Alberta to Coutts, Alberta by CP for interchange to the Burlington Northern Railroad Co.	By Decision No. 507-R-1989 dated October 2, 1989, the Agency determined, pursuant to section 142 of the NTA, 1987, the amount of the CLR for the requested movement and directed CP to publish the rate to remain in force for a period of one year.
CSP Foods Ltd.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of competitive line rates for the movement of canola oil in shipper-supplied tank cars from Altona and Harrowby, Manitoba and Nipawin, Saskatchewan to Winnipeg, Manitoba by CP for interchange to the Burlington Northern Railroad Co.	By Decision No. 650-R-1989 dated December 28, 1989, the Agency determined, pursuant to section 142 of the NTA, 1987, the amount of the CLRs for the requested movements and directed CP to publish the rates to remain in force for a period of one year. The decision of the Agency was contested to the Federal Court of Appeal by CP. The application for leave to appeal was withdrawn by CP in 1991.
Alberta Gas Chemicals Inc.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of a competitive line rate for the movement of methanol in shipper-supplied tank cars from Medicine Hat, Alberta to Coutts, Alberta by CP for interchange to the Burlington Northern Railroad Co.	By Decision No. 497-R-1990 dated September 24, 1990 the Agency determined, pursuant to section 142 of the NTA, 1987, the amount of the CLR for the requested movement and directed CP to publish the rate to remain in force for a period of one year.
Alberta Gas Chemicals Inc.	CP	Application pursuant to section 136 of the NTA, 1987 for the establishment of a competitive line rate for the movement of methanol in shipper-supplied tank cars from Medicine Hat, Alberta to Coutts, Alberta by CP for interchange to the Burlington Northern Railroad Company.	By Decision No. 505-R-1991 dated September 27, 1991 the Agency determined, pursuant to section 142 of the NTA, 1987, the amount of the CLR for the requested movement and directed CP to publish the rate to remain in force for a period of one year.

Comprehensive Review Working Group
National Transportation Agency of Canada
Source: Agency statistics

Final Offer Arbitration Cases Filed Pursuant to the National Transportation Act, 1987

Applicant–Complainant	Respondent	Dispute	Agency Decision
Tall Tree Lumber Company	CN	Application pursuant to section 48 of the NTA, 1987 for Final Offer Arbitration in respect of rates for the movement of lumber.	The application was withdrawn on April 25, 1989.
Parrish and Heimbecker Limited	CN	Application pursuant to section 48 of the NTA, 1987 for Final Offer Arbitration in respect of rail movements of flour destined for export, from Hanover, Ontario to Montreal, Quebec and Halifax, Nova Scotia.	In his decision dated July 9, 1990, the arbitrator decided in favour of shipper. The decision of the arbitrator was contested by CN to the Federal Court of Appeal. The application for leave to appeal has not yet been heard.
TNT Railfast	CP	Application pursuant to section 48 of the NTA, 1987 for Final Offer Arbitration with respect to rates proposed to be charged in 1991 by CP for the movement of insulated and dry boxcars carrying mixed freights from Montreal and Toronto to various destinations in Western Canada.	In its decision dated August 17, 1990, the Agency determined that, in the absence of a final offer by the carrier, it could not proceed with the application for Final Offer Arbitration as the submission was incomplete.

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Source: Agency statistics

Applicant–Complainant	Respondent	Dispute	Agency Decision
Canadian National Railway Company	Parrish and Heimbecker Limited	Application pursuant to subsection 35(1) of the NTA, 1987 to set aside the decision of the arbitrator in the final offer arbitration case between Parrish & Heimbecker Limited and CN on the grounds that the rate chosen by the arbitrator was below compensatory levels and violated subsection 112(2) of the NTA, 1987.	By Decision No. 563-R-1990 dated November 7, 1990, the Agency determined that the decision of the arbitrator was final and binding. Accordingly, CN's request for an Agency inquiry into the matter was dismissed. The decision of the Agency was contested by CN to the Federal Court of Appeal. The application for leave to appeal was dismissed by the Court on May 31, 1991.

Comprehensive Review Working Group
National Transportation Agency of Canada
Source: Agency statistics

Competitive Access Provisions

Non-Agency Shipper Survey Results

During the Fall of 1991, the Canadian Industrial Transportation League (CITL) conducted several informal shipper surveys with respect to the use of the Competitive Access Provisions of the NTA, 1987. The results of these surveys were published in the CITL newsletter "Transport Info" and are reproduced here from that source.

Competitive Line Rates (CLR)

Fifty-three percent (53 percent) of respondents agreed with the statement that "the Competitive Line Rate is the most powerful negotiation tool in the arsenal of the captive Shipper". Twenty percent (20 percent) disagreed while 12 percent said that CLRs are powerful but not the most powerful tool. Over 70 percent of shippers indicated that they had used CLRs during the negotiation process with the railways.

Final Offer Arbitration (FOA)

Eighty-two percent (82 percent) of shippers agreed with the statement that "Final Offer Arbitration is most effective when not used; its greatest potential exists in the threat of use". Thirteen percent (13 percent) disagreed and five per cent said that FOA was no use at all.

Sixty-eight percent (68 percent) of respondents stated that FOA puts shippers in a better bargaining position when negotiating with the railways. Twenty-seven percent (27 percent) disagreed.

Comprehensive Review Working Group
National Transportation Agency of Canada
Source: Canadian Industrial Transportation League